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Supreme Court, U.S.
FILED
JUL 10 1970
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NO. 377

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

PAUL F. PERATI,

Petitioner,

vs.

CALIFORNIA STATE SUPREME COURT,

Appellee.

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF CERTIORARI

AND

PETITION FOR A WRIT OF CERTIORARI

TO

THE CALIFORNIA STATE SUPREME COURT

PAUL F. PERATI

In Propria Persona

6110 Aspinwall Road
Oakland, California 94611

INDEX

	Page
MOTION FOR LEAVE TO FILE	A
JURISDICTION	1
FIRST QUESTION PRESENTED	2
SECOND QUESTION PRESENTED	5
MEMORANDUM OF PERSUASIVE POINTS AND AUTHORITIES	ii & 10
STATEMENT OF THE CASE	11
ARGUMENT	16
VERIFICATION	18
MEMORANDUM OF SERVICE	19

MEMORANDUM OF PERSUASIVE POINTS AND AUTHORITIES

CASES

BALDWIN Vs. New York, U.S. Supreme Court File # 2171-June 1970. 4

BLOOM Vs. ILLINOIS, 391 U.S. 194 4

DUNCAN Vs. LOUISIANA, 391 U.S. 491 3

IN RE GAULT, 387 U.S. 1. 6

PEOPLE Vs. HILL; 2 Cal. App. 2nd 141 7

PEOPLE Vs. SESSLIN, 68 Cal. Reports 2nd 418, 419 9

RODGERS Vs. SUPERIOR COURT, 46 Cal. Reports, 2nd, 3 7

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TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT, and TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

PAUL F. PERATI, In Propria Persona, Petitioner, respectfully moves this Court for leave to file the Petition For a Writ of Certiorari, annexed hereto, under 28 U. S. C. 1257 (3), directed to the California State Supreme Court, to review the judgment of that Court, denying a petition for hearing, thus affirming the judgment of the California State District Court of Appeal, First

Appellate District, Division One, entered on the records of the California State Supreme Court, June 10, 1970; more particularly described in the annexed petition. Also, for such other and further relief as may be just and proper; to insure the application of the essentials of basic constitutional due process and equal protection during the adjudicatory step of a juvenile court action.

Paul F. Perati

Paul F. Perati

In Propria Persona.

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

PAUL F. PERATI,
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vs.
CALIFORNIA STATE SUPREME COURT,
Appellee.

PETITION FOR A WRIT OF CERTIORARI
TO THE
CALIFORNIA STATE SUPREME COURT

TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT, and to THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Paul F. Perati, prays that a writ of certiorari issue to review the judgment of the California State Supreme Court, and in support thereof, requests consideration of the following:

JURISDICTION

The opinion of the California District Court of Appeal is appended, also see page 38, Certified Records. The judgment of the California Supreme Court affirmed the judgment of the District Court of Appeal, and is appended to this petition, also see page 39, Certified Record. The judgment and opinion have not been reported.

The California State Supreme Court rendered its judgment on June 10, 1970, and although not required, a notice of appeal and a request for a certified copy of the complete record was filed June 30, 1970, see page 40, Certified Record.

Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

I.

DOES BASIC DUE PROCESS AND EQUAL PROTECTION REQUIRE THE RIGHT TO A JURY, TO DETERMINE THE FACTUAL QUESTIONS IN ISSUE, WHEN A JUVENILE COURT PROCEEDING MAY RESULT IN INCARCERATION IN AN INSTITUTION OF CONFINEMENT?

The Answer Must Be YES.

When charges of violations of criminal law are at issue, basic Americana has always cherished the right to have question of fact decided by a jury.

July 4, 1776, in the Declaration of Independence, clause 18, America declared to a candid world, that the King of Great Britain was depriving us, in many cases, of the benefit of trial by jury. The importance of trial by jury, to our Founding Fathers, is clear. In two places in our Constitution, provision is made for trial by jury: Article III, section 2, cl. 3; and the Sixth Amendment.

Our California Constitution is on all fours with the basic federal mandate. "The right of trial by jury shall be secured to all, and remain inviolate; *** ***" California Constitution, Article I, Section 7.

In re Gault, 387 U. S. 1 holds: (1)"*** When proceedings may result in incarceration in an institution of confinement, it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase 'due process'". Thus, Gault holds that basic federal constutional guarantees apply to state juvenile court proceedings where possible commitment to a state institution is present.

In Duncan vs Louisiana, 391 U. S. 491, it was held: (1) Trial by jury in criminal cases being fundamental to the American scheme of justice, the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which, were they to be tried in a federal court, would come within the Sixth Amendment's guaranty of

of a jury trial. (Thus, if this case were tried in a federal court, the Sixth Amendment would guaranty a jury trial).

Bloom v Illinois, 391 U. S. 194, appears to leave little doubt as to the basic right to a jury as stated in Duncan v Louisiana (supra).

IN Accordingly: Baldwin v New York State, U. S. Supreme Court File #2171 - June 1970.

An adult tried for the same violation in issue is entitled to have a jury decide the questions of fact involved. Thus, the denial of a jury to a minor in a juvenile court proceeding at the judicial step, after the probation officer has turned to the judicial branch of our government for help, is a clear violation of the minor's right to the EQUAL PROTECTION provision of the Fourteenth Amendment. "***; ***; nor shall any State deprive any person of life, liberty, or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Fourteenth Amendment, United States Constitution.

II.

[A] MAY A LAY PERSON, NOT A MEMBER OF THE JUDICIAL BRANCH, CONFER JURISDICTION ON A SUPERIOR COURT, IN SESSION AS A JUVENILE COURT, TO PROCEED WITH THE TRIAL OF AN ALLEGED FELONIOUS OFFENSE, ON A HEARSAY PETITION, WITHOUT A VALID INDICTMENT OR INFORMATION, SHOWING THE RELIABILITY OF THE HEARSAY INFORMATION AND THE CREDIBILITY OF ITS SOURCE?

[B] IS THE LAYMAN PROBATION OFFICER, HOLDING MEMBERSHIP IN THE EXECUTIVE BRANCH OF OUR GOVERNMENT, FREE OF THE RULES THAT BIND A DISTRICT ATTORNEY IN PROCESSING AN INDICTMENT OR INFORMATION, WHEN THE LAY PERSON DECIDES HE WILL LEAVE THE PRE-JUDICIAL STEP AND SEEK A JUDICIAL DECISION; THUS ENGAGING IN THE PRACTICE OF LAW?

The Answer to both [A] and [B] must be NO.

The powers of the Government of the State of California shall be divided into three (3) separate

departments: The Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this constitution expressly directed or permitted. California Constitution, Article III, sec. I.

Our California Constitution is a limitation on power (not a grant of power, as is the U. S. Constitution). Thus, a layman member of the Executive Branch is without power to draft and prepare legal papers and pleadings in a court of justice, or to determine legal questions that will affect and be relied upon by others in the course of legal proceedings. To hold contra, just because a juvenile is involved, is to deny the public the safeguards they have a right to expect, and to deny the juvenile the exercise of care and fairness implied in due process and equal protection of the law, and Gault is again violated.

(2) Indictment and Information - Necessity For. A court has no jurisdiction to proceed with the trial of an offense without a valid indictment or information. California Constitution, Article I section 8. Penal Code, sec. 682.

(3) Prohibition-Grounds - Excess of jurisdiction - Prohibition is the proper remedy to prevent threatened action in excess of jurisdiction.

(6) An information that is based entirely on hearsay or incompetent evidence is unauthorized. Rodgers vs Superior Court, 46 Cal. Reports, 2nd, 5.

(4) While the district attorney is permitted to charge a defendant with a criminal offense, it must appear that the district attorney makes the charge and likewise, while a grand jury is authorized to accuse one with the commission of an offense, it must appear upon the indictment that the accusation is by the grand jury, and not by someone else or some other body of people, xxx xxx. People v Hill, 2 Cal.App. Reports 2nd 141.

(2a) (2b) Penal Code, sections 806, 813 and 952, relating to complaints and warrants, meet the constitutional test when read and construed together in light of Giordenello vs United States (1958), 357 U.S. 480, and Agualar v Texas, (1964) 378 U.S. 108 (12 L. Ed. 2nd 723; 84 S. Ct. 1509, which formulates the requirements of the United States Constitution, Fourth Amendment, for valid arrest and search warrants and which with Jaben v United States (1965), 381 U. S. 214 (14 L. Ed. 2d 345; 85 S. Ct. 1365), provide the standards applicable to the states through U. S. Constitution, 14th Amendment.

(3a & 3b) Under Penal Code sections 806, 813, and 952, a complaint based on "information and belief" and couched in the statutory language of the alleged offense may support a valid arrest warrant, if the complaint alleges sufficient facts for the magistrate to conclude that probable cause supports the warrant in that the allegations indicate (1) the commission of the crime by the person whose arrest is sought, and (2) the re-

liability of the information and credibility of its source. Absent such allegations, the warrant fails and an arrest made pursuant to it is illegal. People v. Sesslin, 68 Cal. Reports 2nd 418, 419.

The petition or accusatory pleading (page 34, CERTIFIED RECORD) of Mr. Carter and Mr. Callahan, who are members of the Executive Branch of the Government, is an attempt to exercise powers properly belonging to the Judicial Branch. This accusatory pleading not having been screened by a member of the judicial department, and now showing the reliability of the information and the credibility of its source, cannot confer jurisdiction to require a party to answer in a court of law, and is outside the regularity and care required by Gault, and clearly prejudices the substantial rights of the parties defendant.

MEMO OF PERSUASIVE POINTS AND AUTHORITIES

	Page
California Health and Safety Code, Section 11531, see appendix.	11
California, Welfare & Institutions Code, Section 602	11
California Constitution, Article LLI, sec. I. Verbatim on pages 5 & 6.	6
California Constitution, Article I, Section 7. " The Right of trial by jury shall be secured to all, and remain inviolate; ****,***.	3
United States Constitution, 14th Amd., Section 1. ** ***, ***; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.	4
IN RE GAULT, 387 U.S. 1 , (1) ***,**. When proceedings may result in incarceration in an institution of confinement, it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase " due process".	6

STATEMENT OF THE CASE

Petitioner was informed and believes, and alleges that his daughter was taken into custody at the age of 14 years, on December 15, 1969, on private property, without a warrant or probable cause, for two alleged violations of Section 11531 of the Health and Safety Code of California (sale of marijuana, section set out in appendix), alleged to have been made on or about December 9, 1969.

That on January 22, 1970, Mr. Michael J. Carter, a probation officer, did execute a petition on information and belief, page 34, CERTIFIED RECORD, of two alleged violations of the above cited Health and Safety Code, without any indication of the reliability of his information, or the credibility of its source, and without an accusation by the grand jury, the district attorney, or any judicial officer. This petition (page 34, CERTIFIED RECORD) contains the conclusion of the pleader that the juvenile comes within the provisions of Section 602, of the Juvenile Court Law of the State of California.

Section 602. "Minors violating laws, defining crimes; minors failing to obey court order. Any person under the age of 21 years, who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

As these proceedings could result in incarceration in an institution (pages 22 & 26, CERTIFIED RECORD), the care and protection of Gault is needed.

Your petitioner herein as a real party in interest (CERTIFIED RECORD, page 24, lines 10, 11, & 12) under California law, did challenge the jurisdiction of the Superior Court and raised the federal questions to be reviewed in the following manner:

The request for a jury trial was raised by oral motion as soon as the Court was in session

L.

on February 19, 1970 (CERTIFIED RECORD, page 16) and was denied by the Superior Court, same record and page.

The request for a jury trial was raised in the District Court of Appeal by a Motion for a Peremptory Writ of Prohibition (see page 5, CERTIFIED RECORD). The judgment of the District Court of Appeal, left this important question open, (see page 38, CERTIFIED RECORD, and appendix).

The request for a jury trial was raised in the California State Supreme Court by a Petition For Hearing (see pages 5 & 6, Petition For Hearing). The judgment of the California State Supreme Court rendered on June 10, 1970, denied the Petition, thus affirming the judgment of the California State District Court of Appeal, (see page 39, CERTIFIED RECORD, and appendix).

The question of jurisdiction in the fundamental sense: "May a layman, not a member of the judicial branch, confer jurisdiction on a Superior Court in session as a juvenile court, to proceed

with the trial of an alleged offense on a hearsay petition, without a valid indictment or information, showing the reliability of the hearsay information and the credibility of its source?"

This question was first raised in the Superior Court on February 20, 1970, by a verified petition to dismiss. See pages 29 thru 32, Certified Record. This was denied by the Superior Court, see pages 17, 18, CERTIFIED RECORD.

This question was raised in the District Court of Appeal by the motion for a Peremptory Writ of Prohibition, filed March 18, 1970. See page 4 CERTIFIED RECORD. The judgment of the District Court of Appeal (page 38 CERTIFIED RECORD) left this open for the time.

This question was raised in the California State Supreme Court by a Petition For Hearing (see pages 8, 9 & 10, Petition For Hearing in the California State Supreme Court). The judgment of the California Supreme Court affirmed the judgment of the District Court of Appeal, and was entered on June 10, 1970. (See page 39, CERTIFIED RECORD).

Your petitioner filed a request for a certified copy of the complete record, and gave notice of appeal by way of a petition for a writ of certiorari, on June 30, 1970 (see page 40, CERTIFIED RECORD).

ARGUMENT

It is respectfully submitted, the federal questions in issue are fundamental and basic Constitutional questions and have not been decided in conformity with decisions of this Court. Duncan, Bloom and Baldwin vs. New York, all clearly show recognition of the importance of allowing questions of fact to be decided by a jury when the elements of criminal statutes are in issue.

When a person is in jeopardy of being stigmatized by a conviction of a violation of criminal law, with the possibility of institutional confinement, the Sixth Amendment must, to insure the regularity and care provided by due process, as mentioned in Gault, be applied to the States through the Fourteenth Amendment. And in California, where the State Constitution holds a right to a jury shall be secured to all, and remain inviolate, equal protection should not be denied a juvenile, when an

adult has a right to have a jury decide the same questions of fact in issue.

Important legal questions to insure due process, should be determined by a district attorney or magistrate, before a juvenile is required to answer a criminal type accusation. To allow a layman to confer jurisdiction on a Superior Court for an alleged offense, on hearsay, without a valid indictment or information or screening by a magistrate or district attorney, without a showing of the reliability of his information and the credibility of its source, requires one to answer without a showing of probable cause. This clearly violates basic due process, equal protection, and breaches the separation of the Executive and Judicial branches of government.

Applying these basic constitutional provisions will have no bearing on the

pre-adjudicatory step or the disposal Hearing; but will insure regularity and fairness, once the probation officer decides to leave the pre-adjudicatory area and turn to the judicial department for help with his problem.

Therefore, your petitioner prays that a writ of certiorari issue to review the judgment of the California State Supreme Court, that a hearing be granted in the California State Supreme Court under guidelines established by this United States Supreme Court; costs of suit herein, and such other relief as is proper.

Respectfully submitted,

Paul F. Perati

Paul F. Perati
In propria persona

Executed under penalty of perjury, on this 8th day of July, 1970, in Oakland, California.

Paul F. Perati

MEMORANDUM OF SERVICE

All parties required to be served have been served:

Honorable Thomas C. Lynch, Attorney General of the State of California;

Honorable Donald R. Wright, Chief Justice, California State Supreme Court;

Office of the Clerk, California District Court of Appeal;

Honorable Wm. H. Brailsford, Presiding Judge, Alameda County Superior Court;

Mr. G. Wright Morton, Esquire, Deputy District Attorney, Alameda County; and

Mr. William Kesseler, Esquire, Assistant Public Defender, Alameda County.

Service by U.S. mail, first class postage prepaid.

See cover letter.

Section 11531, California Health and Safety Code.

Transp ortation, impor tation, sale, etc., of marijuana:

Every person who transports, imports into this State, sells, furnishes, administers or gives away, or offers to transport, import into this State, sell, furnish, administer, or give away, or attempts to import into this State or transport any marijuana shall be punished by imprisonment (1) in the state prison from five years to life and shall not be eligible for release upon completion of sentenc e, or on parole, or on any other basis until he has served not less than three years.

If such a person has been previously convicted once of any felony offense described in this division or has been previously convicted once of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as (2) a felony offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in a state prison from (3) five years to life, and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than five years in prison.

If such a person has been previously convicted two or more times of any felony offense described in this division or has been previously convicted two or more times of any offense under the laws of any other state or of the United States which

if committed in this State would have been punishable as a felony offense described in this division, the previous convictions shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or are admitted to by the defendant, he shall be imprisoned in a state prison from 10 years to life and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than 10 years in prison.

Court of Appeal of the State of California

IN AND FOR THE

First Appellate District

Division ONE

FILED

In the Matter of Margaret Perati and Paul F. Perati,
Petitioner,

vs.

Superior Court, County of Alameda,
Respondent.

No. 27995

BY THE COURT:

The United States Supreme Court having ruled in the case of In re Winship, decided March 31, 1970, that a conviction of a minor in a juvenile court proceeding must be based upon proof of guilt beyond reasonable doubt, and there being no reason to believe that standard will not be applied in the juvenile proceeding to which this petition relates, the petition for a writ of prohibition is denied.

Dated .....

..... P.J.

1ST CIV. No. 27995

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FILED

MAY 18 1970
WILLIAM I. SULLIVAN, Clerk
By _____ A. P. Deputy

PERATI

V.

SUPERIOR COURT OF THE COUNTY OF ALAMEDA

The time for granting or denying a hearing in the above cause is hereby extended to and including JUNE 23, 1970.

Wright
Chief Justice

16894-877 12-67 1M OSP

June 23, 1970

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

1st District, Division 1, Civil No. 27995

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FILED

JUN 10 1970

WILLIAM J. SULLIVAN, Clerk

By [illegible] Deputy

PERATI

v.

THE SUPERIOR COURT OF THE COUNTY OF ALAMEDA

Petition for hearing DENIED.

Burke

Chief Justice

I, WILLIAM J. SULLIVAN, Clerk of the [illegible] of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 1st day of July A.D. 1970

WILLIAM J. SULLIVAN, Clerk

By [illegible] Deputy Clerk

36289-877 10-68 3M-EMP OSP

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 377

PAUL F. PERATI,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA,
Respondent.

Opposition to Petition for Writ of Certiorari

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TOPICAL INDEX

	Page
Opinion below	1
Statutes Involved	1
Questions Presented	2
Statement of the Case	2
Argument	4
I. This Court Lacks Jurisdiction to Review the Decision of the California Court Declining Review by Extraordinary Writ Because the Decision Is Not a Final One	4
II. A Legislative Decision That a Judge Rather Than a Jury Shall Be the Finder of Fact in a Juvenile Proceeding, Whether or Not the Adjudication Is Concerned with Conduct Which Violates the Criminal Law, Does Not Violate the Rights of Juveniles under the Sixth and Fourteenth Amendments	6
III. Statutory Procedure Providing That Juvenile Proceedings Are Initiated by Means of a Petition Filed by the Probation Officer Does Not Deny Due Process to the Juvenile	8
Conclusion	14

TABLE OF AUTHORITIES CITED

Cases	Pages
Armstrong v. Manzo, 380 U.S. 545 (1965)	11
Bandini Petroleum Co. v. Superior Court, 284 U.S. 8 (1931)	4
Beck v. Washington, 369 U.S. 541, 545 (1962)	13
City & County of San Francisco v. Superior Court, 53 Cal.2d 236, 1 Cal.Rptr. 158, 347 P.2d 294 (1959)	4
Cole v. Arkansas, 333 U.S. 196 (1948)	11
Ertman v. Municipal Court, 68 Cal.App.2d 143, 155 P.2d 908 (1945)	4
Gospel Army v. Los Angeles, 331 U.S. 543 (1947)	5
Hurtado v. California, 110 U.S. 516 (1884)	13
In re Barbara Burrus, et al., No. 128, Oct. Term 1970	8
In re Cofar, 9 Cal.App.3d 643, 88 Cal.Rptr. 651 (1970)	10
In re Dennis M., 70 Cal.2d 444, 456, 75 Cal.Rptr. 1, 450 P.2d 296 (1969)	5
In re Gault, 387 U.S. 1 (1967)	10, 11, 12, 14
In re Oliver, 333 U.S. 257, 273-78 (1948)	11
In re Steven C., 9 Cal.App.3d 255, 261, 88 Cal.Rptr. 97 (1970)	5
In re T.R.S., 1 Cal.App.3d 478, 482, 81 Cal.Rptr. 574 (1969)	5, 13
In re William M., 3 Cal.3d 16, 22, 25, 28, 89 Cal.Rptr. 33, 37, 39, 473 P.2d 737, 741, 743 (1970)	6, 10
In re Winship, 397 U.S. 358 (1970)	10, 11, 14
Jaffe v. Stone, 18 Cal.2d 146, 149-50, 115 P.2d 335, 338 (1941)	14
Lin Woon v. Oregon, 229 U.S. 586 (1913)	13
Madruga v. Superior Court, 346 U.S. 556, 557 n. 1 (1954)	4
McKeiver v. Pennsylvania, No. 322, Oct. Term 1970	8
Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950)	11, 12
Ocampo v. United States, 234 U.S. 91 (1914)	13
Rescue Army v. Municipal Court, 28 Cal.2d 460, 465-67, 171 P.2d 8, 12-13 (1946)	4
Rescue Army v. Municipal Court, 331 U.S. 549 (1947)	4
W. A. Rose Co. v. Municipal Court, 176 Cal.App.2d 67, 1 Cal. Rptr. 49 (1959)	4

STATUTES AND AUTHORITIES	Pages
United States Code	
Title 28, § 1257(3)	4
United States Constitution	
Fifth Amendment	13
Sixth and Fourteenth Amendments	6
California Code of Civil Procedure	
§§ 1102, 1103	4, 6
California Health & Safety Code	
§ 14531	12
California Welfare & Institutions Code	
§§ 500-945	6
§§ 502, 503	14
§§ 600, 601, 602	6, 8
§§ 604(a), (b)	8
§§ 628, 631	9
§§ 632-36	10
§§ 650, 652-53, 656	8
§§ 657, 658-59	10
§ 701	5, 6, 12
§§ 703, 704, 705, 706	7
§ 707	8
§§ 725, 726, 727, 729, 730, 731, 739, 775-79	7
§ 800	5
§§ 1000-1258, 1700-1861	6
California Constitution	
Art. I, § 8	13
§§ 702, 706	7

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 377

PAUL F. PERATI,

Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,

Respondent.

Opposition to Petition for Writ of Certiorari

OPINION BELOW

On April 24, 1970, the California Court of Appeal, First Appellate District, Division One, denied petitioner's petition for writ of prohibition by unpublished order. The California Supreme Court denied a hearing on June 10, 1970.

STATUTES INVOLVED

The California Juvenile Court Law, California Welfare and Institutions Code sections 500 through 945. Relevant sections are set forth in the appendix.

QUESTIONS PRESENTED

I. Whether this Court has jurisdiction to review a state court decision declining discretionary review by extraordinary writ?

II. Whether a jury trial is an essential requirement of due process in a juvenile proceeding?

III. Whether statutory procedure providing that juvenile proceedings are initiated by means of a petition filed by the probation officer denies due process to the juvenile?

STATEMENT OF THE CASE

Petitioner, Paul F. Perati, is appearing in propria persona on behalf of his daughter, Margaret Perati, a minor. Margaret, fourteen years old at the time, was taken into custody by the Oakland Police Department on December 15, 1969, and was released to the custody of petitioner upon his written promise to appear with Margaret at the Probation Department (R 35).[1]

On January 22, 1970, a petition was filed by the Probation Department alleging that Margaret was a person coming within the provisions of section 602 of the Welfare and Institutions Code, citing two incidents of selling or furnishing marijuana to two named persons on December 9, 1969, in violation of section 11531 of the California Health and Safety Code. A hearing on the petition was set for February 19, 1970 (R 36). Written notice of the petition and the hearing was delivered on February 4, 1970 (R 33-34).

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1. Welfare and Institutions Code Section 626(b) provides that an officer who takes a minor into temporary custody under section 625, may, as one alternative, prepare a written notice to appear and upon delivery of the notice to the parent and after obtaining his signature, if necessary, release the minor to the parent. Section 625 provides that a police officer may take into temporary custody a minor under 18 when he has reasonable cause to believe that the minor is a person described in sections 600, 601, 602 (under section 602, a ward of the court is one who violates a law or a court order under 601). The notice to appear in this case states that Margaret was taken into custody for sale of marijuana at Holy Names High School; a violation of California Health and Safety Code Section 11531.

On February 9, 1970, petitioner filed a written notice of motion and motion to dismiss the petition on grounds Margaret had not been brought before the court by indictment or information; that the petition did not indicate a basis for finding probable cause; and that there had been excessive delay in bringing the case to trial (R 29-32).

On February 19, 1970, Margaret appeared before the Juvenile Court, accompanied by both parents and represented by the public defender (R 15, 39). At this time, petitioner moved for a jury trial and the use of a reasonable doubt standard. Both motions were denied (R 16). The court also denied his written motion to dismiss on two of the three grounds urged (R 17-18); petitioner withdrew his claim of excessive delay (R 20). Petitioner requested a thirty day continuance in order to file a petition for writ of prohibition in the Court of Appeal (R 18-19). The court granted a continuance to March 19, 1970 (R 27).

On March 18, 1970, petitioner filed a petition for writ of prohibition in the California Court of Appeal, First Appellate District (R 1). On April 24, 1970, Division One of that court denied the petition, issuing its order as follows:

> "The United States Supreme Court having ruled in the case In re Winship, decided March 31, 1970, that a conviction of a minor in a juvenile court proceeding must be based upon proof of guilt beyond reasonable doubt, and there being no reason to believe that standard will not be applied in the juvenile proceeding to which this petition relates, the petition for writ of prohibition is denied." (R 38).

The California Supreme Court denied a hearing on June 10, 1970 (R 39).

Pending decision on the petition for writ of prohibition and now on this petition for writ of certiorari, the Juvenile Court continued the hearing in Margaret's case.

ARGUMENT

I. This Court Lacks Jurisdiction to Review the Decision of the California Court Declining Review by Extraordinary Writ Because the Decision Is Not a Final One.

Under California law, a writ of prohibition may be issued when the lower court is acting in excess of its jurisdiction and when there is not a plain, speedy, and adequate remedy in the ordinary course of law. Calif. Code Civ. Proc. §§ 1102, 1103; *City and County of San Francisco v. Superior Court*, 53 Cal.2d 236, 1 Cal.Rptr. 158, 347 P.2d 294 (1959). Whether to grant such review is within the sound discretion of the court from which the writ is sought. See *Rescue Army v. Municipal Court*, 28 Cal.2d 460, 465-67, 171 P.2d 8, 12-13 (1946);[2] *W. A. Rose Co. v. Municipal Court*, 176 Cal.App.2d 67, 1 Cal.Rptr. 49 (1959); *Ertman v. Municipal Court*, 68 Cal.App.2d 143, 155 P.2d 908 (1945).

This Court has ruled that a final decision in a proceeding on writ of prohibition is a final judgment for purposes of jurisdiction under section 1257(3) of Title 28 of the United States Code. *Madruga v. Superior Court*, 346 U.S. 556, 557, n. 1 (1954); *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947); *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8 (1931). However, in all of these cases, the California court had entertained the proceeding, and had reached a decision on the merits of the constitutional issue raised. In the instant case, the Court of Appeal merely declined to interrupt the proceedings below to review on their merits the constitutional claims made; the California Supreme Court declined to review this determination by the Court of Appeal. Thus, there has not been an adjudication in this case on the merits of the claims raised.[3]

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2. This Court declined jurisdiction and dismissed the appeal. *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947).

3. We do not mean to imply that the question of jury trial in

The test as to the finality of a state court judgment for the purposes of invoking the jurisdiction of this Court is "'whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court.'" *Gospel Army v. Los Angeles*, 331 U.S. 543 (1947). Although the cases are in different procedural postures, the effect of the order here is similar to that in *Gospel Army*,—the case is returned to the Juvenile Court for further proceedings. If the Juvenile Court makes a finding that Margaret comes within its jurisdiction, she may appeal this finding on appeal from this order (Welf. & Inst. Code § 800) and is free to raise the same issues of the constitutionality of the procedures used sought to be raised in the instant proceedings.

Moreover, even if the order of the California Court of Appeal is technically "final" because it disposes completely of the petition for writ of prohibition, the decision of the Court of Appeal rests on an independent state ground. The California court has simply declined extraordinary review under California procedure apparently because the court concluded that the case did not come within the statutory requirement that the court below exceeded its jurisdiction and that there was no plain, speedy and adequate remedy

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juvenile cases is an open one in California. The California Juvenile Court Law provides for the Juvenile Court to conduct the jurisdictional hearing and make the factual determination that the act on which jurisdiction is based has taken place. Calif. Welf. & Inst. Code § 701. The constitutionality of this procedure has been consistently upheld by the California courts. *In re Dennis M.*, 70 Cal.2d 444, 456, 75 Cal. Rptr. 1, 450 P.2d 296 (1969) (by implication); *In re Steven C.*, 9 Cal.App.3d 255, 261, 88 Cal.Rptr. 97 (1970); *In re T.R.S.*, 1 Cal.App.3d 178, 182, 81 Cal.Rptr. 574 (1969). Petitioner's claim that equal protection requires that juvenile proceedings be initiated by indictment or preliminary examination has also been rejected by the California courts. *See In re T.R.S., supra.*

at law. See Calif. Code Civ. Proc. §§ 1102, 1103.[4] This denial of extraordinary review does not prevent review of the federal questions presented, it merely defers them until raised in normal appellate procedure, if the court below sustains the allegations of the petition.

II. A Legislative Decision That a Judge Rather Than a Jury Shall Be the Finder of Fact in a Juvenile Proceeding, Whether or Not the Adjudication Is Concerned With Conduct Which Violates the Criminal Law, Does Not Violate the Rights of Juveniles Under the Sixth and Fourteenth Amendments.

Under the California Juvenile Court Law,[5] there is no provision for a jury trial; the determination of the facts which bring a juvenile within the jurisdiction of the court is made by the juvenile court judge. California Welfare and Institutions Code Section 701 provides that the judge must first conduct a hearing to determine whether the minor (a person under 21) is a neglected, potentially delinquent or a delinquent child, as described by sections 600, 601 or 602 of the Welfare and Institutions Code.[6]

4. To stay the proceedings below would inflict a hardship on the child by the protraction of proceedings against him. *See In re Wilfred M.*, 3 Cal.3d 16, 22, 25, 89 Cal.Rptr. 33, 37, 39, 473 P.2d 737, 741, 743 (1970). In *M*, the California Court refused to stay juvenile court proceedings pending its decision in a habeas corpus case to protect the child, "because even a few weeks' delay in the court proceedings would have hindered his proper care and guidance."

5. Calif. Welf. & Inst. Code §§ 500-945. See also Welf. & Inst. Code §§ 1000-1258 (Institutions for Delinquents); Welf. & Inst. Code §§ 1700-1861. (The Youth Authority).

6. Under section 600, a dependent child of the court is one who is without a parent or guardian to exercise care or control; who is destitute or not provided with the necessaries of life, or whose home is unfit; or who is physically dangerous because of deficiency or disorder. Under section 601, a ward of the court is one who is generally speaking, beyond his parents' control, an habitual truant, or in danger of leading *inter alia*, an immoral life. Under section 602, a ward of the court is one who violates a law, or a court order under section 601.

If the court makes a finding that the minor comes within its jurisdiction, it then conducts a dispositional hearing (Calif. Welf. & Inst. Code §§ 702, 706). The court has various alternatives in treating the minor, some of which are dependent on the section giving rise to jurisdiction. See Calif. Welf. & Inst. Code §§ 725, 726, 727, 730, 731.

Among the alternatives for minors coming within section 602 and for those within section 601 if further procedures, including a hearing, have been taken, is commitment to the California Youth Authority(Welf. & Inst. Code §§ 730, 731, 777) which has jurisdiction over educational training and treatment institutions maintained as correctional schools. See Welf. and Inst. Code § 1000. The court may also utilize the resources of the Department of Mental Hygiene, the Youth Authority, and public or private agencies or doctors for diagnostic medical, or psychiatric services, treatment or recommendations. See Calif. Welf. & Inst. Code §§ 703, 704, 705, 739. In any case, the commitment or disposition made by the juvenile court may be reviewed and modified at any time. See Welf. & Inst. Code §§ 729, 775-779.

Petitioner here contends that "due process and equal protection require the right to a jury, to determine the factual questions in issue, where a juvenile court proceeding may result in incarceration in an institution of confinement." (Pet. at 2).

The provision of the California Juvenile Court Law providing that a court rather than a jury is the trier of fact has been consistently upheld by the California courts.[7] The California Juvenile Court Law establishes a comprehensive and carefully planned system for the rehabilita-

7. See cases cited footnote 3, *supra*.

tion, treatment and when necessary, for the incarceration of minors found to need such care after careful and complete adjudicatory and dispositional hearings. We believe that the provision for hearing by a juvenile court judge rather than a jury fully protects the child's rights to due process in such proceedings.

The question of the right to jury trial in juvenile court proceedings is presently pending before this Court. *In re Barbara Burrus, et al.*, No. 128, October Term 1970; *McKeiver v. Pennsylvania*, No. 322, October Term 1970. The People of the State of California have filed with this Court a Brief Amicus Curiae in the *Burrus* case, in support of the position that due process does not encompass the right to trial by jury in juvenile proceedings. We incorporate herein, by reference, our argument in that case.

III. Statutory Procedure Providing That Juvenile Proceedings Are Initiated by Means of a Petition Filed by the Probation Officer Does Not Deny Due Process to the Juvenile.

California law provides that juvenile court proceedings are commenced by filing of a petition in juvenile court by the probation officer. Welf. & Inst. Code § 650. Such a petition is filed after investigation by the probation office, or upon certification of the minor to the juvenile court by a court in which criminal proceedings have been commenced. Calif. Welf. & Inst. Code §§ 604, 652-53.[8] Section 656 provides that the petition must be verified and must contain:

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8. The jurisdiction of the juvenile court is exclusive for children under 16 (Calif. Welf. & Inst. Code §§ 604(a), 707); it is initially exclusive for children between 16 and 18, with transfer to the criminal courts in the discretion of the judge pursuant to statutory procedures (Calif. Welf. & Inst. Code §§ 604(a), 707); and it is concurrent for minors between 18 and 21. (Calif. Welf. & Inst. Code §§ 600-602, 604(b).

"(a) The name of the court to which the same is addressed.

(b) The title of the proceeding.

(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The name or names and residence address, if known to petitioner, of all parents and guardians of such minor. If there is no parent or guardian residing within the state, or if his place of residence is not known to petitioner, the petition must also contain the name and residence address, if known, of any adult relative residing within the county, or, if there be none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor in whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he is detained in custody, the date and the precise time the minor was taken into custody."

It should be noted that a minor may not be held in custody longer than 48 hours by either a police officer or a probation officer unless a petition or a criminal complaint has been filed. Calif. Welf. & Inst. Code § 631. The probation officer is required to release the child unless he finds that specific conditions exist. Calif. Welf. & Inst. Code § 628.

Once a petition has been filed, the minor must be released unless a detention hearing is held before the expiration of the next judicial day and the court finds detention is necessary. Calif. Welf. & Inst. Code §§ 632-636.[9]

Upon the filing of the petition, the clerk of the Juvenile Court is required to set the case for hearing within 30 days, or if the minor is in custody, within 15 judicial days of the date detention is ordered. Calif. Welf. & Inst. Code § 657. Notice must be served on the minor (if he is eight or over in a section 602 case) and upon each person described in the petition. Calif. Welf. & Inst. Code §§ 658-59.

In separately stated arguments, petitioner challenges the constitutionality of this California procedure. He urges that it is a violation of due process for a "lay person," by means of a "hearsay" petition, to confer jurisdiction on the Juvenile Court without a valid indictment or information, without screening by a magistrate or the district attorney, and without a showing of probable cause. We submit that this argument is totally without merit.

In *In re Gault*, 387 U.S. 1 (1967), this Court held generally that procedural due process could not be denied a juvenile merely by classifying juvenile proceedings as civil in nature; and held specifically that certain procedural requirements were essential elements of due process; notice, right to counsel, right to confront witnesses and right against compelled self-incrimination. In *In re Winship*, 397 U.S. 358 (1970), this Court held that proof beyond a

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9. In addition to facts supporting detention, the probation officer must produce a prima facie case that the minor committed the offense in order to support detention. *See In re William M., supra*, footnote 4.

If a complaint rather than a petition is filed, the bail provisions of California law are applicable. If the minor is subsequently certified to the juvenile court, a detention hearing must be held. *See In re Colar*, 9 Cal.App.3d 613, 88 Cal.Rptr. 651 (1970).

reasonable doubt was a requirement of due process in both criminal trials and juvenile proceedings where a violation of criminal law was charged. This Court did not hold in either case that juvenile proceedings were criminal in nature, or that due process required criminal procedures to be applied in complete detail. This Court did note, in *Winship,* that applying a reasonable doubt standard would not risk destruction of the beneficial aspects of the juvenile process, including the "informality, flexibility, or speed of the hearing at which the fact finding takes place." *Id.* at 366.

In both *Gault* and *Winship,* the juvenile proceedings had been initiated by means of a petition. In neither case was the slightest doubt cast on the validity of proceeding in this manner, providing that constitutionally adequate notice was given. In *Gault,* the Court held the Arizona procedure constitutionally inadequate. To satisfy due process notice "must be given sufficiently in advance to scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity.' . . . Due process of law requires . . . notice which would be deemed adequate in a civil or criminal proceeding." *Id.* at 33. [footnotes omitted]. In footnote 53 appended to the latter statement, this Court notes cases discussing adequate notice: *Cole v. Arkansas,* 333 U.S. 196 (1948); *In re Oliver,* 333 U.S. 257, 273-78 (1948) (both criminal); *Armstrong v. Manzo,* 380 U.S. 545 (1965); *Mullane v. Central Hanover Tr. Co.,* 339 U.S. 306 (1950).

In *Cole* and *Oliver,* this Court stated that a right to have notice of the specific charge and a right to be heard, in a trial of the issues are basic and clearly established principles of due process. In *Armstrong,* a case involving an adoption proceeding, this Court held that due process at a

minimum required that "'deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case,'" citing *Mullane*.

In the instant case a petition was filed and served on petitioner in accordance with the California procedure previously described. Petitioner was informed of the date of the hearing and in specific terms of the nature of the acts alleged to have been committed by Margaret:

> "This person comes within the provisions of Section 602 of the Juvenile Court Law of the State of California, in that said person, on or about December 9, 1969, in the County of Alameda, State of California, did then and there wilfully and unlawfully sell, furnish or give away marijuana to Denise Denker, Oakland, California, thereby violating Section 11531 of the Health and Safety Code of California:
>
> "*COUNT TWO:* Further that in the County of Alameda on or about December 9, 1969, she did then and there wilfully and unlawfully sell, furnish or give away marijuana to Debbie Bushnell, Oakland, California, thereby violating Section 11531 of the Health and Safety Code of California;" (R 36).

We submit that such a petition and the hearing which is provided for under California law fully conform to the principles of due process set forth in *Gault* and the cases therein cited.[10]

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10. Petitioner also urges that the petition is defective because it fails to conform to the requirements for an arrest or search warrant. Pet. at 8-9. This petition is not a warrant, but analogous to a complaint or a charging document. Adequate notice is at issue, not probable cause. Although petitioner apparently also alleges that an arrest was made illegally, Pet. at 11, no facts relating to this "arrest," nor its relation to any evidence are available at this stage of the proceeding. Such a claim could be raised at the jurisdictional hearing because, under California law, the allegations of the petition must be proved by evidence admissible at a criminal trial in order to find jurisdiction under section 602. Calif. Welf. & Inst. Code § 701.

An argument similar to petitioner's—that a juvenile proceeding must be initiated by indictment or information—was considered and rejected by the California Court of Appeal in *In re T.R.S.*, 1 Cal.App.3d 178, 181, 81 Cal.Rptr. 574 (1969). The court noted that section 8, Article I of the California Constitution, providing that certain offenses be prosecuted by indictment or information, is part of penal proceedings prescribed for the prosecution of crimes and was not applicable to juvenile proceedings which were not criminal. The court held that conformance between juvenile procedures and criminal procedures is not required by the guarantee of equal protection of the law.

Even in criminal proceedings this Court has not held that due process demands the application to the states of the Fifth Amendment requirement that no person be held to answer for a capital or otherwise infamous crime except on grand jury indictment. In *Hurtado v. California*, 110 U.S. 516 (1884), this Court held that it was not a violation of due process for California to proceed by way of preliminary hearing in a case which resulted, after trial, in the imposition of the death penalty. In *Lim Woon v. Oregon*, 229 U.S. 586 (1913) this Court held that it was not a violation of due process to proceed on the filing of an information without either grand jury indictment or preliminary hearing. *Accord, Beck v. Washington*, 369 U.S. 541, 545 (1962) (dictum); *Ocampo v. United States*, 234 U.S. 91 (1914).

In California the preliminary hearing is an examination by a magistrate to determine the existence of probable cause to hold the defendant to answer in superior court. "The purpose of the preliminary hearing is to weed out groundless or unsupported charges of grave offenses, and

to relieve the accused of the degradation and expense of a criminal trial." *Jaffe v. Stone,* 18 Cal.2d 146, 149-50, 115 P.2d 335, 338 (1941). There is no criminal trial at issue here, with its "degradation and expense." See Calif. Welf. & Inst. Code §§ 502, 503. The purpose of special juvenile court proceedings is precisely to relieve the juvenile of these aspects of criminal procedure and to replace them with a non-criminal hearing with the beneficial aspects of informality, flexibility and speed, recognized by this Court in *Winship.* It should be noted, moreover, that a child cannot be held in custody in California pending this jurisdictional hearing unless he has an immediate detention hearing at which probable cause must be shown. See note 9 *supra.* We submit that there is no denial of due process or equal protection in the California Juvenile Court procedure; it fully conforms to the standards established by this Court in *Gault.*

CONCLUSION

Although we recognize that the issue of the right to jury trial in juvenile cases is now pending in this Court and thus cannot be dismissed as frivolous, it is our view that in the procedural posture of this case this issue is not properly before this Court. The claim that due process precludes proceeding by way of a petition is not only also not properly before the Court, but is totally without merit. For these reasons, we respectfully request that the petition for writ of certiorari be denied.

Dated: October 28, 1970.

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Appendix

Code of Civil Procedure

§ 1102. [Writ of prohibition defined.] The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

§ 1103. [Where and when writ issued.] It may be issued by any court, except municipal or justice courts, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

Welfare and Institutions Code

502. The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the State; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents. This chapter shall be liberally construed to carry out these purposes.

503. An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.

600. Any person under the age of 21 years who comes within any of the following descriptions is within the juris-

diction of the juvenile court which may adjudge such person to be a dependent child of the court:

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian or other person in whose custody or care he is.

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

601. Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of this State, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

602. Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

603. No court shall have jurisdiction to conduct a preliminary examination or to try the case of any person upon an accusatory pleading charging such person with the commission of a public offense or crime when such person was under the age of 18 years at the time of the alleged commission thereof unless the matter has first been submitted to the juvenile court by petition as provided in Article 7 (commencing with Section 650), and said juvenile court has made an order directing that such person be prosecuted under the general law.

604. (a) Whenever a case is before any court upon an accusatory pleading and it is suggested or appears to the judge before whom such person is brought that the person charged was, at the date the offense is alleged to have been committed, under the age of 18 years, such judge shall immediately suspend all proceedings against such person on such charge; he shall examine into the age of such person, and if, from such examination, it appears to his satisfaction that such person was at the date the offense is alleged to have been committed under the age of 18 years, he shall forthwith certify to the juvenile court of his county:

(1) That such person (naming him) is charged with such crime (briefly stating its nature);

(2) That such person appears to have been under the age of 18 years at the date the offense is alleged to have been committed, giving date of birth when known;

(3) That proceedings have been suspended against such person on such charge by reason of his age, with the date of such suspension.

To such certification, the judge shall attach a copy of the accusatory pleading.

(b) Whenever a case is pending in any court upon an accusatory pleading and it appears to the satisfaction of the

judge that the person charged is under the age of 21 years, the judge may certify the case to the juvenile court of his county in the manner prescribed by subdivision (a) of this section.

(c) When a court certifies a case to the juvenile court pursuant to subdivision (a) or subdivision (b), it shall be deemed that jeopardy has not attached by reason of the proceedings prior to certification, but the court may not resume proceedings in the case, nor may a new proceeding under the general law be commenced in any court with respect to the same matter unless the juvenile court has found that the minor is not a fit subject for consideration under the Juvenile Court Law and has ordered that proceedings under the general law resume or be commenced.

(d) The certification and accusatory pleading shall be promptly transmitted to the clerk of the juvenile court. Upon receipt thereof, the clerk of the juvenile court shall immediately notify the probation officer who shall file a petition in accordance with the requirements of Section 656, except that such petition need not be verified.

625. A peace officer may, without a warrant, take into temporary custody a minor:

(a) Who is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Sections 600, 601, or 602, or

(b) Who is a ward or dependent child of the juvenile court or concerning whom an order has been made under Section 636 or 702, when such officer has reasonable cause for believing that person has violated an order of the juvenile court or has escaped from any commitment ordered by the juvenile court, or

(c) Who is under the age of 21 years and who is found in any street or public place suffering from any sickness or in-

jury which requires care, medical treatment, hospitalization, or other remedial care.

In any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor is a person described in Section 601 or 602, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional rights, including his right to remain silent, his right to have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel.

626. An officer who takes a minor into temporary custody under the provisions of Section 625 shall thereafter proceed as follows:

(a) He may release such minor; or

(b) He may prepare in duplicate a written notice to appear before the probation officer of the county in which such minor was taken into custody at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons such minor was taken into custody. He shall deliver one copy of the notice to such minor or to a parent, guardian, or responsible relative of such minor and may require such minor or his parent, guardian, or relative, or both, to sign a written promise that either or both will appear at the time and place designated in the notice. Upon the execution of the promise to appear, he shall immediately release such minor. He shall, as soon as practicable, file one copy of the notice with the probation office; or

(c) He may take such minor without unnecessary delay before the probation officer of the county in which such person was taken into custody, or in which such person resides, or in which the acts take place or the circumstances

exist which are alleged to bring the minor within the provisions of Sections 600, 601, or 602, and deliver the custody of such minor to the probation officer.

In determining which disposition of the minor he will make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided such alternative is compatible with the best interests of the minor and the community.

627. When an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement pursuant to this article, he shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody and the place where he is being held.

627.5. In any case where a minor is taken before a probation officer pursuant to the provisions of Section 626 and it is alleged that such minor is a person described in Section 601 or 602, the probation officer shall immediately advise the minor and his parent or guardian that anything the minor says can be used against him and shall advise them of the minor's constitutional rights, including his right to remain silent, his right to have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel. If the minor or his parent or guardian requests counsel, the probation officer shall notify the judge of the juvenile court of such request and counsel for the minor shall be appointed pursuant to Section 634.

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless one or more of the following conditions exist:

(a) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(b) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(c) The minor is provided with a home which is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian or other person in whose custody or care he is.

(d) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the person or property of another.

(e) The minor is likely to flee the jurisdiction of the court.

(f) The minor has violated an order of the juvenile court.

(g) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

629. As a condition for the release of such minor, the probation officer may require such minor or his parent, guardian, or relative, or both, to sign a written promise that either or both of them will appear before the probation officer at the juvenile hall or other suitable place designated by the probation officer at a specified time.

630. (a) If the probation officer determines that the minor shall be retained in custody, he shall immediately file a petition pursuant to Section 656 with the clerk of the juvenile court who shall set the matter for hearing on the detention hearing calendar. Immediately upon filing the petition with the clerk of the juvenile court, if the minor is alleged to be a person described in Section 601 or 602, the

probation officer shall serve such minor with a copy of the petition and notify him of the time and place of the detention hearing. The probation officer shall thereupon notify a parent or guardian of the minor of the time and place of such hearing: Such notice may be given orally.

(b) In such hearing the minor has a privilege against self-incrimination and has a right to confrontation by, and cross-examination of, any person examined by the court as provided in Section 635.

630.1. Upon reasonable notification by counsel representing the minor, his parents or guardian, the clerk of the court shall notify such counsel of the hearings in the manner provided for notice to the parent or guardian of the minor under this chapter.

632. Unless sooner released, a minor taken into custody under the provisions of this article shall be brought before a judge or referee of the juvenile court for a hearing (which shall be referred to as a "detention hearing") to determine whether the minor shall be further detained, as soon as possible but in any event before the expiration of the next judicial day after a petition to declare such minor a ward or dependent child has been filed. If the minor is not brought before a judge or referee of the juvenile court within the period prescribed by this section, he shall be released from custody.

633. Upon his appearance before the court at the detention hearing, such minor and his parent or guardian, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of such minor and his parent or guardian to be represented at every stage of the proceedings by counsel.

634. When it appears to the court that the minor or his parent or guardian desires counsel but is unable to afford

and cannot for that reason employ counsel, the court may appoint counsel. In any case in which the minor is alleged to be a person described in Section 601 or 602, he shall be represented by counsel and the court shall appoint counsel for the minor if the minor or his parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, unless there is an intelligent waiver of the right of counsel by the minor. If the parent or guardian does not furnish counsel and the court determines that such parent or guardian has the ability to pay, the court shall appoint counsel at the expense of the parent or guardian. In any case in which it appears to the court that there is such a conflict of interest between a parent or guardian and child that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or guardian. In a county where there is no public defender the court may fix the compensation to be paid by the county for service of such appointed counsel.

635. The court will examine such minor, his parent, guardian, or other person having relevant knowledge, hear such relevant evidence as the minor, his parent or guardian or their counsel desires to present, and, unless it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court shall make its order releasing such minor from custody.

636. If it appears upon the hearing that such minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of

immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court may make its order that such minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court.

650. A proceeding in the juvenile court to declare a minor a ward or a dependent child of the court is commenced by the filing with the court, by the probation officer, of a petition, in conformity with the requirements of this article.

651. Either the juvenile court in the county in which a minor resides or in the county where the minor is found or in the county in which the acts take place or the circumstances exist which are alleged to bring such minor within the provisions of Sections 600, 601 or 602, is the proper court to commence proceedings under this chapter.

652. Whenever the probation officer has cause to believe that there was or is within the county, or residing therein, a person within the provisions of Sections 600, 601 or 602, the probation officer shall immediately make such investigation as he deems necessary to determine whether proceedings in the juvenile court should be commenced.

653. Whenever any person applies to the probation officer to commence proceedings in the juvenile court, such application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Sections 600, 601 or 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make such investigation as he deems necessary to determine whether pro-

ceedings in the juvenile court should be commenced. If the probation officer does not take action under Section 654 and does not file a petition in the juvenile court within three weeks after such application, he shall endorse upon the affidavit of applicant his decision not to proceed further and his reasons therefor and shall immediately notify the applicant of the action taken or the decision rendered by him under this section. The probation officer shall retain the affidavit and his indorsement thereon for a period of 30 days after such notice to applicant.

654. In any case in which a probation officer, after investigation of an application for petition or other investigation he is authorized to make, concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within such jurisdiction, he may, in lieu of filing a petition, and with consent of the minor's parent or guardian, undertake a program of supervision of the minor, for not to exceed six months, and attempt thereby to adjust the situation which brings the minor within the jurisdiction of the court or creates the probability that he will soon be within such jurisdiction. Nothing in this section shall be construed to prevent the probation officer from filing a petition at any time within said six-month period.

655. When any person has applied to the probation officer, pursuant to Section 653, to commence juvenile court proceedings and the probation officer fails to file a petition within three weeks after such application, such person may, within one month after making such application, apply to the juvenile court to review the decision of the probation officer, and the court may either affirm the decision of the probation officer or order him to commence juvenile court proceedings.

656. A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall be verified and must contain:

(a) The name of the court to which the same is addressed.

(b) The title of the proceeding.

(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The name or names and residence address, if known to petitioner, of all parents and guardians of such minor. If there is no parent or guardian residing within the State, or if his place of residence is not known to petitioner, the petition must also contain the name and residence address, if known, of any adult relative residing within the county, or, if there be none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he is detained in custody, the date and the precise time the minor was taken into custody.

657. Upon the filing of the petition, the clerk of the juvenile court shall set the same for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition must be set for hearing within 15 judicial days from the date of the order of the court directing such detention.

658. Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon the minor, if the minor is 14 or more years of age, or, in a case in which the minor is alleged to be a person described in Section 601 or 602, if the minor is eight or more

years of age, and upon each of the persons described in subdivision (c) of Section 656 whose residence addresses are set forth in said petition and thereafter before the hearing upon all such persons whose residence addresses become known to the clerk. If the petition alleges that the minor is a person described in Section 601 or 602 the clerk shall issue a copy of the petition, to the minor's attorney and to the district attorney, if the district attorney has notified the clerk of the court that he wishes to receive such petition, containing the time, date, and place of the hearing.

659. The notice must contain:

(a) The name and address of the person to whom the notice is directed.

(b) The date, time, and place of the hearing on the petition.

(c) The name of the minor upon whose behalf the petition has been brought.

(d) Each section and subdivision under which the proceeding has been instituted.

(e) A statement that the minor and his parent or guardian or adult relative, as the case may be, to whom notice is required to be given, are entitled to have an attorney present at the hearing on the petition, and that, if the parent or guardian or such adult relative is indigent and cannot afford an attorney, and the minor or his parent or guardian or such adult relative desires to be represented by an attorney, such parent or guardian or adult relative shall promptly notify the clerk of the juvenile court.

660. (a) If the minor is detained the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive such notice and copy of the petition, either personally or by certified mail with request for return receipt, as soon as possible after filing of the petition and at least five days prior to the time set for hearing, unless such hearing is set less than five days

from the filing of the petition, in which case, such notice and copy of the petition must be served at least 24 hours prior to the time set for hearing.

(b) If the minor is not detained the clerk of the juvenile court shall cause the notice and copy of the petition to be served on all persons required to receive such notice and copy of the petition, either personally or by certified mail with request for return receipt, at least 10 days prior to the time set for hearing. If such person is known to reside outside of the county, the clerk of the juvenile court shall mail the notice and copy of the petition, by certified mail with request for return receipt, to such person, as soon as possible after filing of the petition and at least 10 days before the time set for hearing. Personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to such service by certified mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at or prior to the hearing.

(c) For purposes of this section, service on the minor's attorney shall constitute service on the minor's parent or guardian.

661. In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its citation directing any parent or guardian of the person concerning whom a petition has been filed to appear at the time and place set for any hearing under the provisions of this chapter, including a hearing under the provisions of Section 563, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring such minor with him. Personal service of such citation shall be made at least 24 hours before the time stated therein for such appearance.

700. At the beginning of the hearing on a petition filed pursuant to Article 7 (commencing with Section 650), the judge or clerk shall first read the petition to those present and upon request of the minor upon whose behalf the petition has been brought or upon the request of any parent, relative or guardian, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences. The judge shall ascertain whether the minor and his parent or guardian or adult relative, as the case may be, has been informed of the right of the minor to be represented by counsel, and if not, the judge shall advise the minor and such person, if present, of the right to have counsel present and where applicable, of the right to appointed counsel. If such person is unable to afford counsel and desires to have the minor represented by counsel, the court may in a case in which the minor is alleged to be within the provisions of Section 600, appoint counsel to represent the minor. In any case in which the minor is alleged to be a person described in Section 601 or 602, he shall be represented by counsel and the court shall appoint counsel to represent the minor if the minor or his parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, unless there is an intelligent waiver of the right of counsel by the minor. If the parent or guardian does not furnish counsel and the court determines that such parent or guardian has the ability to pay, the court shall appoint counsel at the expense of the parent or guardian. The court shall continue the hearing for not to exceed seven days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself with the case, or to determine whether the parent or guardian or adult relative is unable to afford counsel at his own expense, and shall continue the hearing as necessary to provide reasonable opportunity for the minor and the parent or guardian or adult relative to prepare for the hearing.

701. At the hearing, the court shall first consider only the question whether the minor is a person described by Sections 600, 601, or 602, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him within the jurisdiction of the juvenile court is admissible and may be received in evidence; however, a preponderance of evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602, and a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Sections 600 or 601. When it appears that the minor has made an extrajudicial admission or confession and denies the same at the hearing, the court may continue the hearing for not to exceed seven days to enable the probation officer to subpoena witnesses to attend the hearing to prove the allegations of the petition. If the minor is not represented by counsel at the hearing, it shall be deemed that objections that could have been made to the evidence were made.

702. After hearing such evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Sections 600, 601, or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its findings and order accordingly and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor. Prior to doing so, it may continue the hearing, if necessary, to receive the social study of the probation officer or to receive other evidence on its own motion or the motion of a parent or guardian for not to exceed 10 judicial days if the minor

is detained during such continuance, and if the minor is not detained, it may continue the hearing to a date not later than 30 days after the date of filing of the petition. The court may, for good cause shown continue the hearing for an additional 15 days, if the minor is not detained. The court may make such order for detention of the minor or his release from detention, during the period of the continuance, as is appropriate.

702.5. In any hearing conducted pursuant to Section 701 or 702 to determine whether a minor is a person described in Section 601 or 602, the minor has a privilege against self-incrimination and has a right to confrontation by, and cross-examination of, witnesses.

703. If the court, after finding that the minor is a person described by Sections 600, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing, and commit the person to the Department of Mental Hygiene for placement in a state hospital or state home for the mentally deficient for an indeterminate period of not more than 90 days, for observation of the mental health or the mental condition of the person and recommendations concerning his future care, supervision, and treatment. If the Department of Mental Hygiene has designated a particular state institution to receive minors so committed for observation, all commitments shall be made to the department for placement in the institution so designated. The superintendent of the institution to which the minor is so committed shall receive him, unless the institution is already full or the funds available for its support are exhausted, or if, in the opinion of the superintendent, the person is not a suitable subject for admission. Before such person is conveyed to the institution, it shall be ascertained from the superintendent thereof if the person may be accepted as herein set forth.

For each minor person so committed for observation, the county from which he is committed shall pay the state at the rate of forty dollars ($40) per month for the time the person so committed remains in the state institution for observation. Such expense shall be considered expense of support and maintenance within the meaning of Article 16, (commencing with Section 900) and the county shall be entitled to reimbursement therefor from the earnings, property, or estate of the minor, or from his parents, guardian, or other person liable for his support and maintenance, in accordance with the provisions of that article. The department shall present to the county, not more frequently than monthly, a claim for the amount due the state under this section which the county shall process and pay pursuant to the provisions of Chapter 4 (commencing with Section 29700) of Division 3 of Title 3 of the Government Code.

The medical superintendent or other person in charge of the state hospital or state home for the mentally deficient in which a minor person is placed for observation pursuant to this section shall, as soon as possible and within 90 days, examine the person to determine the state of his mental health or his mental condition, and submit to the juvenile court a report on the state of his mental health or mental condition which shall include a diagnosis of the nature of his mental illness or disability, if any, and recommendations concerning his future care, supervision, and treatment.

If the medical superintendent or other person in charge of the state institution in which the minor has been placed for observation reports to the court that the minor is not affected with any mental illness, disorder, or other mental disability for which he might be committed to the Department of Mental Hygiene for placement in any state institution under Division 6 (commencing with Section 5000) of

this code, such superintendent or other person in charge of the state institution shall return the minor to the juvenile court within seven days after the date of the report and the court shall proceed with the case in accordance with the provisions of this chapter.

When the juvenile court directs the filing in any other court of a petition for the commitment of a minor to the Department of Mental Hygiene for placement in any state institution, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the medical superintendent or other person in charge of the state institution in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the medical superintendent or other person in charge of the state institution in lieu of the appointment, certificate, and testimony of medical examiners or other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by court of medical examiners or other expert witnesses or may consider the report as evidence in addition to the certificates and testimony of medical examiners or other expert witnesses.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for commitment is filed or under commitment ordered by that court.

704. (a) If the court has determined that a minor is a person described by Section 602, or if the court has determined that a minor is a person described by Section 601 and a supplemental petition for commitment of such minor to the Youth Authority has been filed pursuant to Section 777, and such minor is otherwise eligible for commitment to the Youth Authority, the court, if it concludes that a

disposition of the case in the best interest of the minor requires such observation and diagnosis as can be made at a diagnostic and treatment center of the Youth Authority, may continue the hearing and order that such minor be placed temporarily in such a center for a period not to exceed 90 days, with the further provision in such order that the Director of the Youth Authority report to the court its diagnosis and recommendations concerning the minor within the 90-day period.

(b) The Director of Youth Authority shall, within the 90 days, cause the minor to be observed and examined and shall forward to the court his diagnosis and recommendation concerning such minor's future care, supervision, and treatment.

(c) The Youth Authority shall accept such person if there is in effect a contract made pursuant to Section 1752.1 and if it believes that the person can be materially benefited by such diagnostic and treatment services, and if the Director of the Youth Authority certifies that staff and institutions are available. No such person shall be transported to any facility under the jurisdiction of the Youth Authority until the director has notified the referring court of the place to which said person is to be transported and the time at which he can be received.

(d) The probation officer of the county in which an order is made placing a minor in a diagnostic and treatment center pursuant to this section, or any other peace officer designated by the court, shall execute the order placing such minor in the center or returning him therefrom to the court. The expense of such probation officer or other peace officer incurred in executing such order is a charge upon the county in which the court is situated.

705. Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally

ill or if the court is in doubt concerning the mental health of any such person, the court may order that such person be held temporarily in the psychopathic ward of the county hospital or hospital whose services have been approved and /or contracted for by the department of health of the county, for observation and recommendation concerning the future care, supervision, and treatment of such person.

706. After finding that a minor is a person described in Sections 600, 601, or 602, the court shall hear evidence on the question of the proper disposition to be made of the minor. The court shall receive in evidence the social study of the minor made by the probation officer and such other relevant and material evidence as may be offered, and in any judgment and order of disposition, shall state the social study made by the probation officer has been read and considered by the court.

707. At any time during a hearing upon a petition alleging that a minor is, by reason of violation of any criminal statute or ordinance, a person described in Section 602, when substantial evidence has been adduced to support a finding that the minor was 16 years of age or older at the time of the alleged commission of such offense and that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, or if, at any time after such hearing, a minor who was 16 years of age or older at the time of the commission of an offense and who was committed therefor by the court to the Youth Authority, is returned to the court by the Youth Authority pursuant to Section 780 or 1737.1, the court may make a finding noted in the minutes of the court that the minor is not a fit and proper subject to be dealt with under this chapter, and the court shall direct the district attorney or other appropriate prosecuting officer to prosecute the person under the applicable criminal

statute or ordinance and thereafter dismiss the petition or, if a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are held, shall dismiss the petition and issue its order directing that the other court proceedings resume.

In determining whether the minor is a fit and proper subject to be dealt with under this chapter, the offense, in itself, shall not be sufficient to support a finding that such minor is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law.

A denial by the person on whose behalf the petition is brought of any or all of the facts or conclusions set forth therein or of any inference to be drawn therefrom is not, of itself, sufficient to support a finding that such person is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law.

The court shall cause the probation officer to investigate and submit a report on the behavioral patterns of the person being considered for unfitness.

725. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

(a) If the court has found that the minor is a person described by Section 601 or 602, it may, without adjudging such minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months.

(b) If the court has found that the minor is a person described by Section 601 or 602, it may order and adjudge the minor to be a ward of the court.

(c) If the court has found that the minor is a person described by Section 600, it may order and adjudge the minor to be a dependent child of the court.

726. In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

(a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(b) That the minor has been tried on probation in such custody and has failed to reform.

(c) That the welfare of the minor requires that his custody be taken from his parent or guardian.

727. When a minor is adjudged a dependent child of the court, on the ground that he is a person described by Section 600, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such minor, including medical treatment, subject to further order of the court.

The court may order the care, custody, control and conduct of such minor to be under the supervision of the probation officer or may commit such minor to the care, custody and control of:

(a) Some reputable person of good moral character who consents to such commitment.

(b) Some association, society, or corporation embracing within its objects the purpose of caring for such minors, with the consent of such association, society, or corporation.

(c) The probation officer, to be boarded out or placed in some suitable family home or suitable private institution, subject to the requirements of Chapter 1 (commencing with Section 16000) of Part 4 of Division 9; provided, however, that pending action by the State Department of Social Welfare, the placement of a minor in a home certified as meeting minimum standards for boarding homes by the probation officer shall be legal for all purposes.

(d) Any other public agency organized to provide care for needy or neglected children.

729. Every hearing in which an order is made adjudging a minor a dependent child of the juvenile court pursuant to Section 600 and every subsequent hearing in which such an order is made, except a hearing at which the court orders the termination of its jurisdiction over such minor, shall be continued to a specific future date not more than one year after the date of such order. The continued hearing shall be placed on the appearance calendar and the probation officer shall make an investigation, file a supplemental report and make his recommendation for disposition. The court shall advise all persons present of the date of the future hearing and of their right to be present, to be represented by counsel and to show cause, if they have cause, why the jurisdiction of the court over the minor should be terminated. Notice of hearing shall be mailed by the probation officer to the same persons as in an original proceeding and to counsel of record by certified mail addressed to the last known address of the person to be notified not earlier than 30 days preceding the date to which the hearing was continued.

730. When a minor is adjudged a ward of the court on the ground that he is a person described by Section 601, the court may order any of the types of treatment referred to in Section 727, and as an additional alternative, may commit

the minor to a juvenile home, ranch, camp or forestry camp. If there is no county juvenile home, ranch, camp or forestry camp within the county, the court may commit the minor to the county juvenile hall.

When such ward is placed under the supervision of the probation officer or committed to his care, custody and control, the court may make any and all reasonable orders for the conduct of such ward including the requirement that he go to work and earn money for the support of his dependents or to effect reparation and in either case that he keep an account of his earnings and report the same to the probation officer and apply such earnings as directed by the court. The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.

Such ward may be committed to the Youth Authority only upon a proceeding for the modification of an order of the court conducted pursuant to the provisions of Section 777.

731. When a minor is adjudged a ward of the court on the ground that he is a person described by Section 602, the court may order any of the types of treatment referred to in Sections 727 and 730, and as an additional alternative, may commit the minor to the Youth Authority.

733. No ward of the juvenile court who is under the age of eight years, and no such ward who is suffering from any contagious, infectious, or other disease which would probably endanger the lives or health of the other inmates of any state school shall be committed to the Youth Authority.

734. No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that

he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority.

739. (a) Whenever any person is taken into temporary custody under the provisions of Article 6 (commencing with Section 625) of this chapter and is in need of medical, surgical, dental, or other remedial care, the probation officer may, upon the recommendation of the attending physician, authorize the performance of such medical, surgical, dental, or other remedial care. The probation officer shall notify the parent, guardian, or person standing in loco parentis of the person, if any, of the care found to be needed before such care is provided, and if the parent, guardian, or person standing in loco parentis objects, such care shall be given only upon order of the court in the exercise of its discretion.

(b) Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize such remedial care or treatment for such person, the court, upon the written recommendation of a qualified physician and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for such person.

(c) Whenever a ward or dependent child of the juvenile court is placed by order of the court within the care and custody or under the supervision of the probation officer of the county in which the ward or dependent child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other

remedial care or treatment for the ward or dependent child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize such medical, surgical, dental, or other remedial care for the ward or dependent child, by licensed practioners, as may from time to time appear necessary.

(d) Whenever it appears that a minor otherwise within the provisions of subdivisions (a), (b), or (c) requires immediate emergency medical, surgical, dental, or other remedial care, or whenever the probation officer cannot, with reasonable diligence, locate and notify the parent, guardian, or person standing in loco parentis of the need of the minor for such care, the court, upon the written recommendation of a duly licensed physician, may make an order authorizing, or the probation officer, upon the written recommendation of a duly licensed physician, may authorize, the performance of such care as is reasonably necessary under the circumstances, without notice to the parent, guardian, or person standing in loco parentis.

(e) In any case in which the court orders the performance of any medical, surgical, dental, or other remedial care pursuant to this section, the court may also make an order authorizing the release of information concerning such care to probation officers, parole officers, or any other qualified individuals or agencies caring for or acting in the interest and welfare of the minor under order, commitment, or approval of the court.

(f) Nothing in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of the custody or control of the minor by order of the court, in providing any medical, surgical, dental, or other remedial treatment recognized or permitted under the laws of this state.

775. Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article.

776. No order changing, modifying, or setting aside a previous order of the juvenile court shall be made either in chambers, or otherwise, unless prior notice of the application therefor has been given by the judge or the clerk of the court to the probation officer and to the minor's counsel of record, or, if there is no counsel of record, to the minor and his parent or guardian.

777. An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative or friend and directing placement in a foster home, or commitment to a private institution or commitment to a county institution, or an order changing or modifying a previous order by directing commitment to the Youth Authority shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the probation officer in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation of the minor.

(b) Upon the filing of such supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the probation officer shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 658 and 660.

778. Any parent or other person having an interest in a child who is a ward or dependent child of the juvenile court or the child himself through a properly appointed guardian may, upon grounds of change of circumstance

or new evidence, petition the court in the same action in which the child was found to be ward or dependent child of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require such change of order or termination of jurisdiction.

If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to such persons and by such means as prescribed by Sections 776 and 779, and, in such instances as the means of giving notice is not prescribed by such sections, then by such means as the court prescribes.

779. The court committing a ward to the Youth Authority may thereafter change, modify, or set aside the order of commitment. Ten days' notice of the hearing of the application therefor shall be served by United States mail upon the Director of the Youth Authority. In changing, modifying, or setting aside such order of commitment, the court shall give due consideration to the effect thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Au-

thority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as in this section provided, nothing in this chapter shall be deemed to interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority.

However, before any inmate of a correctional school may be transferred to a state hospital, he shall first be returned to a court of competent jurisdiction and, after hearing, may be committed to a state hospital for the insane in accordance with law.

780. If any person who has been committed to the Youth Authority appears to be an improper person to be received by or retained in any institution or facility under the jurisdiction of the Youth Authority or to be so incorrigible or so incapable of reformation under the discipline of any institution or facility under the jurisdiction of the Youth Authority as to render his retention detrimental to the interests of the Youth Authority, the Youth Authority may return such person to the committing court. However, the return of any person to the committing court does not relieve the Youth Authority of any of its duties or responsibilities under the original commitment, and such commitment continues in full force and effect until it is vacated, modified, or set aside by order of the court.

When any such person is so returned to the committing court, his transportation shall be made, and the compensation therefor paid, as provided for the execution of an order of commitment.

800. A judgment or decree of a juvenile court or final order of a referee which becomes effective without approval of a judge of the juvenile court assuming jurisdiction and declaring any person to be a person described in Section 600, 601, or 602, or on denying a motion made pursuant to

Section 567, may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment; but no such order or judgment shall be stayed by such appeal, unless suitable provision is made for the maintenance, care, and custody of such person pending the appeal, and unless such provision is approved by an order of the juvenile court. Such appeal shall have precedence over all other cases in the court to which the appeal is taken.

An appellant unable to afford counsel shall be provided a free copy of the transcript.

Constitution of California, Article I

Pleading Guilty Before Magistrate—Prosecutions

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. When a defendant is charged with the commission of a felony, by a written complaint subscribed under oath and on file in a court within the county in which the felony is triable, he shall, without unnecessary delay, be taken before a magistrate of such court. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the aid of counsel, and allow him a reasonable time to send for counsel; and the magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the city or township in which the court is situated. If the felony charged is not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him whether he pleads guilty or not guilty to the offense charged therein; there-

upon, or at any time thereafter while the charge remains pending before the magistrate and when his counsel is present, the defendant may, with the consent of the magistrate and the district attorney or other counsel for the people, plead guilty to the offense charged or to any other offense the commission of which is necessarily included in that with which he is charged, or to an attempt to commit the offense charged; and upon such plea of guilty, the magistrate shall immediately commit the defendant to the sheriff and certify the case, including a copy of all proceedings therein and such testimony as in his discretion he may require to be taken, to the superior court, and thereupon such proceedings shall be had as if such defendant had pleaded guilty in such court.

The foregoing provisions of this section shall be self-executing. The Legislature may prescribe such procedure in cases herein provided for as is not inconsistent herewith. In cases not hereinabove provided for, such proceedings shall be had as are now or may be hereafter prescribed by law, not inconsistent herewith.